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1.1 Summary of Benchbook Contents

This benchbook explains the procedures required in child protective proceedings, from reporting and investigating suspected child abuse and neglect, to required court hearings in the Family Division of the Circuit Court, to appeals to the Michigan Court of Appeals and Michigan Supreme Court. Although child protective proceedings involve a complex interplay between the judicial and social services systems, detailed coverage is given only to required court procedures. The following limitations on subject matter should be noted:

- internal Department of Human Services (DHS) policies governing child protective, foster care, and supervising agency workers are cited when relevant but are not dealt with in-depth;
- rules governing the regulation of foster care homes and institutions are not discussed in detail; and
- detailed treatment of the legal requirements for adoptions should be sought in Warner, *Adoption Proceedings Benchbook* (MJI, 2003).

The organization of this benchbook is intended to follow a typical child protective proceeding. Chapter 2 explains the requirements for reporting and investigating suspected child abuse or neglect. A report of suspected abuse or neglect culminates in action by DHS's Children's Protective Services (CPS) Division. This action may involve either offering services and counseling to the family or filing a petition requesting formal court action.

A child may be taken into temporary protective custody following an investigation but prior to the filing of a petition in court. If a CPS worker (or other person) presents a petition to the Family Division, the court must follow certain procedures when deciding whether to take jurisdiction over the child and place him or her outside of the home. These preliminary steps are explained in the following chapters:

- Chapter 3 outlines the procedures for obtaining temporary protective custody of a child, either with a court order or without a court order.
- Chapter 4 explains the requirements for subject matter jurisdiction, personal jurisdiction, proper venue, and transfer of the case.
- Chapter 5 summarizes time and notice requirements applicable to all stages of a child protective proceeding.
- Chapter 6 deals with petition requirements and the court's option of using a preliminary inquiry if the child is not in custody and custody is not requested.
- Chapters 7 and 8 detail the procedures required at a preliminary hearing, during which the court must decide whether to authorize the petition to be filed and whether to place the child outside of his or her home pending trial. The court may also order an alleged abuser of the child out of the child's home, rather than removing the child from the home. Chapter 8 also discusses procedures to review a child's placement at any time during the proceedings.

If the court authorizes the filing of the petition, a trial will be held, unless the parent enters a plea of admission or no contest, to determine whether the court will take personal jurisdiction over the child. This stage of the proceedings, known as the "adjudicative phase," is detailed in the following chapters:

- Chapter 9 covers pretrial conferences, discovery, and motions.
- Chapter 10 details the procedures for taking a parent's plea of admission or no contest.
- Chapter 11 discusses common evidentiary issues in child protective proceedings.
- Chapter 12 explains the required procedures for trials in child protective proceedings.

If the court takes jurisdiction over the child, the case moves into the "dispositional phase." During the dispositional phase, the family must participate in court-ordered services and counseling designed to improve the conditions leading to court jurisdiction and, if necessary, to reunify the family. If, at the initial dispositional hearing, regularly held review hearings, or a permanency planning hearing, the court determines that the family should not be reunified, a hearing on termination of parental rights will be held. The dispositional phase is described in the following chapters of this benchbook:

- Chapter 13 covers initial dispositional hearings.
- Chapter 14 contains an overview of funding sources that may be used to pay the costs of child protective proceedings and child placements.
- Chapter 15 deals with review of referees' recommended findings and conclusions.
- Chapter 16 explains the procedures for conducting dispositional review hearings, and for conducting emergency removal hearings when the agency supervising a child who was not removed from the home believes that the child is in immediate danger of harm.
- Chapter 17 covers permanency planning hearings, which are held to decide upon a permanent plan for the child, and whether to proceed with a hearing on termination of parental rights.
- Chapter 18 explains in detail the procedures required for terminating parental rights to a child, either at an initial dispositional hearing or after.
- Chapter 19 sketches the post-termination review process, during which efforts to find a permanent adoptive or foster family are monitored by the court.
- Chapter 20 covers the heightened procedural requirements that must be observed in child protective proceedings involving Indian children.

The final two chapters cover matters that are applicable to all stages of child protective proceedings:

- Chapter 21 covers appeals in child protective proceedings.
- Chapter 22 covers Family Division recordkeeping requirements.

Note: Throughout this benchbook, "Family Division" is used to describe the Family Division of the Circuit Court. References to the probate court or "juvenile court" used in statutes, court rules, or case law may have been altered to conform to this usage. MCR 3.903(A)(4) states that "court" means the Family Division of the Circuit Court when used in Subchapter 3.900. In addition, MCL 600.1009 states that a reference to the former Juvenile Division of the Probate Court in any statute shall be construed as a reference to the Family Division of Circuit Court.

1.2 Table Summarizing Michigan Statutes and Court Rules Related to Child Protective Proceedings

The following table provides general guidance in locating statutes and court rules cited in this benchbook related to child protective proceedings.

Type of Proceeding	Statutes and Court Rules
Reporting and Investigating of Suspected Child Abuse or Neglect	<p>Statutes:</p> <ul style="list-style-type: none"> —MCL 722.621 et seq. (Child Protection Law) —MCL 722.904 of the Parental Rights Restoration Act (judicial reporting of suspected abuse following hearing on waiver of parental consent for abortion) —MCL 333.2640, MCL 333.16281, MCL 333.16648, MCL 333.18117, MCL 333.18237, MCL 330.1748a, MCL 333.6112, MCL 333.6113, and MCL 600.2165 (release of medical, dental, counseling, psychological, mental health, substance abuse, and school records) <p>Court Rule: MCR 3.218(D) (DHS CPS access to Friend of the Court records)</p>
Child Protective Proceedings in Family Division	<p>Statutes:</p> <ul style="list-style-type: none"> —MCL 712A.1 et seq. (Juvenile Code) —MCL 722.1101 et seq. (Uniform Child Custody Jurisdiction & Enforcement Act) <p>Court Rules:</p> <ul style="list-style-type: none"> —MCR 3.901–3.928 (general rules for child protective cases) —MCR 3.961–5.978 (rules for child protective cases) —MCR 3.980 (rule for American Indian child custody cases) —MCR 3.991–3.993 (reviews, rehearings, and appeals)
Safe Delivery of Newborns	<p>Statute:</p> <p>MCL 712.1 et seq. (Safe Delivery of Newborns Law)</p>
Establishing Parentage	<p>Statutes:</p> <ul style="list-style-type: none"> —MCL 722.711 et seq. (Paternity Act) —MCL 722.1001 et seq. (Acknowledgment of Parentage Act)
Care and Custody of a Child Subject to Child Protective Proceedings	<p>Statutes:</p> <ul style="list-style-type: none"> —Social Welfare Act, MCL 400.1 et seq. (contains provisions regarding placement and funding of placements) —Michigan Children’s Institute, MCL 400.201 et seq. —MCL 700.5201 et seq. (appointment of guardians) —Foster Care Review Boards, MCL 722.131 et seq. —Foster Care and Adoption Services Act, MCL 722.951 et seq. (rules governing supervising agencies) —Child Care Organizations, MCL 722.111 et seq. (rules governing foster care and other placements) —MCL 722.124a(1) (consent for medical treatment of court ward)

Other statutes and court rules may be incorporated by reference in these provisions. However, a court rule outside of Subchapter 3.900 may only be applied to a child protective proceeding if a court rule within Subchapter 3.900 specifically provides that it applies. MCR 3.901(A) states in part as follows:

“(1) The rules in [Subchapter 3.900], in subchapter 1.100 and in MCR 5.113, govern practice and procedure in the family division of the circuit court in all cases filed under the Juvenile Code.

“(2) Other Michigan Court Rules apply to juvenile cases in the family division of the circuit court only when this subchapter specifically provides.”

See also MCR 1.103 (“Rules stated to be applicable . . . only to a specific type of proceeding apply only . . . to that type of proceeding and control over general rules”).

MCR 1.104 deals with rules of “practice and procedure” contained in statutes. “Rules of practice set forth in any statute, if not in conflict with any of these rules, are effective until superseded by rules adopted by the Supreme Court.” Thus, statutory rules of procedure, if not in conflict with the court rules governing child protective proceedings, apply to such proceedings. Court rules take precedence over statutes only in matters involving judicial rules of practice and procedure, not substantive law. See, generally, *McDougall v Schanz*, 461 Mich 15 (1999).

The other court rules that are specifically made applicable to child protective proceedings are listed below.

- MCR 2.003 (disqualification of a judge);
- MCR 2.004 (notice and opportunity to participate in proceedings for incarcerated parties);
- MCR 2.104(A) (proof of service of a summons);
- MCR 2.106(G)(1) and (G)(3) (proof of service by publication);
- MCR 2.107(D) (proof of service of papers other than a summons);
- MCR 2.114(A) (verification of petitions);
- MCR 2.117(B) (appearance of attorney);
- MCR 2.119 (motion practice);
- MCR 2.313 (sanctions for discovery violations);

- MCR 2.401 (scope and effect of pretrial conferences, “except as otherwise provided in or unless inconsistent with the rules of [Subchapter 3.900]”);
- MCR 2.506 (service of subpoenas);
- MCR 2.508–2.516, except as modified by MCR 3.911 (jury procedure in child protective cases);
- MCR 2.602(A)(1)–(2) (form and signing of judgments);
- MCR 2.613 (limitations on correction of error);
- MCR 3.205 (manner of notice from Family Division to another Michigan court with jurisdiction over a minor);
- MCR 3.206(A)(4) (required information in the petition to identify other Family Division matters involving members of the same family);
- MCR 3.606 (contempts committed outside the presence of the court);
- MCR 5.113 (form and filing of papers);
- MCR Chapter 7, except as modified by MCR 3.993 (appeals); and
- MCR 8.108 or as provided by statute (records of proceedings).

MCR 2.116, which governs motions for summary disposition in civil cases, does not apply to child protective proceedings. *In re PAP*, 247 Mich App 148, 153–54 (2001).

Construction and interpretation of court rules. MCR 3.902 states as follows:

“(A) *In General.* The rules are to be construed to secure fairness, flexibility, and simplicity. The court shall proceed in a manner that safeguards the rights and proper interests of the parties. Limitations on corrections of error are governed by MCR 2.613.

“(B) *Philosophy.* The rules must be interpreted and applied in keeping with the philosophy expressed in the Juvenile Code. The court shall ensure that each minor coming within the jurisdiction of the court shall:

- (1) receive the care, guidance, and control, preferably in the minor’s own home, that is conducive to the minor’s welfare and the best interests of the public; and

(2) when removed from parental control, be placed in care as nearly as possible equivalent to the care that the minor’s parents should have given the minor.”

MCL 712A.1(3) contains similar language.

1.3 Applicable Federal Law and Regulations

Several federal statutes and regulations apply to child protective proceedings in Michigan. Applicable federal statutes and regulations include the following:

- **Adoption Assistance & Child Welfare Act of 1980, PL 96-272, codified at 42 USC 620 et seq.** This act requires courts to make certain findings regarding removal of a child from parental custody, including findings that continued custody by the parent would be “contrary to the child’s welfare” and that “reasonable efforts” have been made to prevent removal or to reunify the family. The act also provides for review and permanency hearings.
- **Adoption & Safe Families Act of 1997, PL 105-89, amending Titles IV-B and IV-E of the Social Security Act, 42 USC 620 and 670 et seq. (ASFA).** Among other things, this act includes provisions that clarify when an agency must make “reasonable efforts” to prevent removal of a child or to reunify a family.
- **Regulations implementing ASFA, 45 CFR 1355.10 et seq.** These regulations detail required court and agency procedures.
- **Indian Child Welfare Act, 25 USC 1901 et seq. (ICWA).** This act sets forth the procedures required when an “Indian child” is involved in a child protective or other custody proceeding.

The ICWA is discussed in detail in Chapter 20. Because they govern Michigan’s eligibility for federal reimbursement of Children’s Protective Services expenses and foster care administrative and placement expenses, ASFA and its implementing regulations are discussed in detail at relevant points throughout this benchbook. When court compliance with a regulation is required to establish or maintain a child’s eligibility for foster care funding under Title IV-E of the Social Security Act, it is noted in this benchbook. See Section 14.1 for a summary of court requirements. The following summary is only intended as an overview of some of the key provisions of ASFA and its implementing regulations.

Summary of ASFA. The ASFA became effective November 19, 1997. Federal regulations implementing ASFA became effective March 27, 2000. Many of the requirements of ASFA and its implementing regulations have

been incorporated into Michigan statutes and court rules. Among other changes, ASFA:

*DHS is required to file a petition with the court in the circumstances listed below. See Section 2.22.

- clarifies the requirements that a child may not be removed from his or her home unless a judge determines that continuation in the home is “contrary to the child’s welfare” and that “reasonable efforts” have been made to prevent such removal or to reunify the family following removal. See 42 USC 671(a)(15)(B). In determining when efforts are reasonable, a child’s health and safety must be the paramount concern. Efforts to prevent a child’s removal or reunify a family are not required where a court has determined that:
 - the parent has subjected the child to “aggravated circumstances” (as defined in state law, including but not limited to, abandonment, torture, chronic abuse, and sexual abuse);
 - the parent has committed murder of another child of the parent; committed voluntary manslaughter of another child of the parent; aided or abetted, attempted, conspired, or solicited murder or voluntary manslaughter of another child of the parent; or committed felony assault resulting in serious bodily injury to the child or another child of the parent; or
 - the parental rights of the parent to a sibling have been terminated involuntarily. 42 USC 671(a)(15)(D).
- clarifies the requirements for “permanency hearings,” including the requirement that such a hearing be held within 30 days after a determination that one of the circumstances listed above exists. 42 USC 671(a)(15)(E)(i). Permanency hearings are also required to be held within 12 months of the date that a child entered foster care and at least every 12 months thereafter. See 42 USC 675(5)(c).
- requires “reasonable efforts” to be made to place the child in accordance with a permanency plan and “concurrent planning” (simultaneously planning for reunification and an alternative permanent placement). 42 USC 671(a)(15)(C) and (F).
- requires the state to file or join in filing a petition for termination of parental rights if a child has been in foster care for 15 of the last 22 months, unless the child is in the care of a relative, a state agency has demonstrated a compelling reason why termination would not be in the best interests of the child, or the state has not provided necessary services for family reunification (in cases where reasonable efforts to reunify the family must be made). 42 USC 675(5)(E).

- requires the state to file or join in filing a petition for termination of parental rights if a court has determined that a child has been abandoned or the parent has committed murder of another child of the parent; committed voluntary manslaughter of another child of the parent; aided or abetted, attempted, conspired, or solicited murder or voluntary manslaughter of another child of the parent; or committed felony assault resulting in serious bodily injury to the child or another child of the parent, unless the child is in the care of a relative, a state agency has demonstrated a compelling reason why termination would not be in the best interests of the child, or the state has not provided necessary services for family reunification (in cases where reasonable efforts to reunify the family must be made). 42 USC 675(5)(E).
- requires that foster parents, preadoptive parents, and relative caretakers must be given notice and an opportunity to be heard at reviews or hearings in child protective proceedings. They may not be made parties to the proceeding solely on the basis of this new requirement, however. 42 USC 675(5)(G).

The regulations implementing ASFA clarify the act's requirements. Among other things, the regulations:*

- require the judicial "contrary to the child's welfare" determination be made in the first court order that sanctions removal. If this determination is not made, the child's foster care maintenance payments will be ineligible for reimbursement under Title IV-E for the duration of that child's stay in foster care. 45 CFR 1356.21(c).
- require the "reasonable efforts to prevent removal" determination, or a determination that such efforts were not required, to be made within 60 days after the child's removal. 45 CFR 1356.21(b)(1)(i). If this determination is not made within 60 days, the child's foster care maintenance payments will be ineligible for reimbursement under Title IV-E for the duration of that child's stay in foster care. 45 CFR 1356.21(b)(1)(ii).
- require a determination that "reasonable efforts" to finalize a permanency plan be made within 12 months of a child's entry into foster care and every 12 months thereafter while the child is in foster care. 45 CFR 1356.21(b)(2)(i). If this determination is not timely, the child's foster care maintenance payments will be ineligible for reimbursement under Title IV-E until the required determination is made. 45 CFR 1356.21(b)(2)(ii).

*For guidance in interpreting these regulations, see 65 Federal Register 4020 (2000).

1.4 Application of the Michigan Rules of Evidence

The Michigan Rules of Evidence (MRE) do not apply to child protective proceedings unless a court rule specifies that they apply. MCR 3.901(A)(3) states:

“The Michigan Rules of Evidence, except with regard to privileges, do not apply to proceedings under this subchapter, except where a rule in this subchapter specifically so provides. MCL 722.631 governs privileges in child protective proceedings.”

See also MRE 1101(b)(7) (the Michigan Rules of Evidence, other than those with respect to privileges, do not apply wherever a rule in Subchapter 3.900 states that they don’t apply). The applicability of the MRE and the law governing privileges are discussed in Sections 11.2 and 11.3.

MCR 3.903(A)(14) defines “legally admissible evidence” as “evidence admissible under the Michigan Rules of Evidence.”